

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:14-CV-383-FL

MARCUS ANTOINE WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
DR. ARGILA,	)	
	)	
Defendant.	)	

The matter comes before the court for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B).

The matter also is before the court on the memorandum and recommendation (“M&R”) (DE 27) of Magistrate Judge James E. Gates pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), in which he recommends that this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. No objections to the M&R have been filed, and the time within which to make any objection has expired. In this posture, the issues raised are ripe for ruling. For the reasons that follow, the court adopts the recommendation of the magistrate judge and dismisses this action without prejudice.

**STATEMENT OF THE CASE**

On July 7, 2014, plaintiff, a state inmate, filed this civil rights action *pro se* pursuant to 42 U.S.C. § 1983, alleging that defendant Dr. Argila acted with deliberate indifference to his serious medical needs in violation of the Eighth Amendment to the United States Constitution. Plaintiff subsequently filed several non-dispositive motions including: a “Motion of Final Pre-trial Settlement Hearing” (DE 6), motions for appointment of counsel (DE 7, 23), “Motion to Subpoena Statements

from Maury Correctional Inst[itution]–Custody [and] Medical Staff” (DE 8), “Motion on Evidentiary Challenges” (DE 11), motion for preliminary injunction (DE 12), “Motion [to] Subpoena All Documentation and Legal Books/Papers on Deliberate Indifference–Breach of Duty and Negligence for Court” (DE 13), “Motion of Violating Plaintiff’s Requests of Rule 6(a)-(b)-(d), Rule 7(b)-(1)-(2)-(3), Rule 8(b)-(c)” (DE 14), “Motion on Violation of Equal Protection Law and Discriminations and Protection Act and Negligence” (DE 15), “Motion on Subpoena Maury Correctional Inst[itution] Custody and Medical Staff” (DE 19), and “Motion on Civil Procedure 35(a) Physical or Mental Evaluation or Produce Medical Reports and Reports on Occurred Incident on Plaintiff/Negligence” (DE 22). The action was referred to the magistrate judge for ruling on plaintiffs’ motions and for a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). The magistrate judge subsequently issued a M&R which recommends that plaintiff’s action be dismissed without prejudice for failure to state a claim pursuant to § 1915(e)(3)(B)(ii). The magistrate judge also denied as moot all of plaintiff’s non-dispositive motions. Plaintiff did not object to the M&R.

## **DISCUSSION**

Upon careful review of the record, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). In the absence of specific and timely filed objections, the court reviews the magistrate judge’s findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).

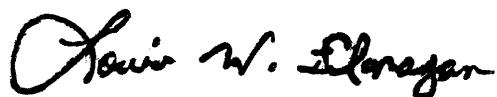
In this case, the magistrate judge reviewed plaintiff’s complaint and determined that plaintiff’s allegations, at most, constitute a disagreement with the medical treatment he received for

his cellulitis or negligence. Neither theory is cognizable as an Eighth Amendment claim. See Russell v. Sheffer, 528 F.2d 318, 318-19 (4th Cir. 1975) (per curiam) (finding that an inmate's disagreement concerning “[q]uestions of medical judgment are not subject to judicial review”); Grayson v. Peed, 195 F.3d 692, 695 (4th Cir. 1999) (“Deliberate indifference is a very high standard-a showing of mere negligence will not meet it.”). The court agrees with the magistrate judge’s analysis and ADOPTS the findings and recommendations of the magistrate judge in full.

## CONCLUSION

In summary, upon careful review of the M&R to which no objection has been made, as well as a review of the relevant case law, pleadings, and motions, the court ADOPTS the findings and recommendations of the magistrate judge in full (DE 27), and DISMISSES this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) on the grounds that plaintiff failed to state a claim.

SO ORDERED, this 14th day of April, 2015.



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LOUISE W. FLANAGAN  
United States District Judge